

MARY ANN SMITH  
Deputy Commissioner  
SEAN M. ROONEY  
Assistant Chief Counsel  
MARLOU de LUNA (State Bar No. 162259)  
Senior Counsel  
Department of Business Oversight  
320 West 4th Street, Suite 750  
Los Angeles, California 90013-2344  
Telephone: (213) 576-7606  
Facsimile: (213) 576-7181  
Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	FIL ORG ID: 160301
	)	
THE COMMISSIONER OF BUSINESS	)	CITATION INCLUDING:
OVERSIGHT,	)	(1) DESIST AND REFRAIN ORDER
	)	
Complainant,	)	(2) ASSESSMENT OF ADMINISTRATIVE
	)	PENALTIES
	)	
v.	)	(3) CLAIM FOR ANCILLARY RELIEF AND
	)	COSTS
HANDEL'S ENTERPRISES, INC., LEONARD	)	
J. FISHER,	)	
	)	
Respondents.	)	

Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), finds the following:

**I**

**Introduction**

1. Handel's Enterprises, Inc. (Handel's) is an Ohio corporation with its principal place of business at 3830 Starr Centre Drive, Suite 1, Canfield, Ohio 44406. Handel's is in the business of

1 operating ice cream shops under the “Handel’s” name. The company maintains a website at  
2 www.handelsicream.com.

3 2. At all relevant times, Leonard J. Fisher (Fisher) is the president of Handel’s.

4 3. The Commissioner as the chief officer of the Department of Business Oversight  
5 (Department) is responsible for administering and enforcing the California Franchise Investment Law  
6 (FIL) (Corporations Code § 31000 et seq.).

## 7 II

### 8 Statement of Facts

9 4. Since at least December of 2009, Handel’s and Fisher (collectively, Respondents)  
10 have offered and sold franchises in California pursuant to franchise agreements. The agreements  
11 grant the right to engage in the business of operating a retail ice cream store under Handel’s trade  
12 names, exclusive trademarks, service marks, advertising and other commercial symbols. Handel’s  
13 Disclosure Document (FDD) states that “[t]he franchisee will operate a business selling homemade  
14 ice cream, sherbet, ices, sorbet, frozen yogurt and other ice cream products that principally involves  
15 the establishment and operation of an ice cream parlor.” Handel’s initial registration with the  
16 Commissioner to offer and sell franchises in California became effective on December 30, 2009 and  
17 expired on April 20, 2010. Handel’s is required to renew its registration on an annual basis. Its  
18 present franchise registration would terminate on April 22, 2019.

19 5. On March 30, 2015, Handel’s filed an application to renew its registration (2015  
20 Registration). The 2015 Registration was approved and became effective on April 13, 2015 and it  
21 expired on April 20, 2016.

22 6. On January 11, 2016, Respondents filed a post-effective amendment application to  
23 modify its franchise agreement, specifically Article Fourteen, section 14.02; Article Sixteen, section  
24 16.06; and Article Seventeen, sections 17.03, 17.04 and 17.07. The amended franchise agreement  
25 became effective on January 19, 2016 (2016 Amended Agreement). There were no revisions made to  
26 the FDD.

27 ///

7. On January 22, 2016, Respondents offered and sold at least one Handel's franchise in California (2016 Sale), but Respondents failed to provide the 2016 Amended Agreement (effective on January 19, 2016) to the prospective franchisee who subsequently executed a franchise agreement that did not include the material changes contained in the 2016 Amended Agreement.

8. Moreover, in connection with the 2016 Sale, Respondents failed to provide a copy of the FDD, together with a copy of all proposed agreements relating to the sale of the franchise, at least 14 days prior to the execution of the franchise agreement or other agreement, to the prospective franchisee, as required by section 31119.

### III

#### **Citation and Desist and Refrain Order** **Violations of Corporations Code sections 31119, subdivision (a) and 31201**

10. Corporations Code section 31119, subdivision (a), provides:

It is unlawful to sell any franchise in this state that is subject to registration under this law without first providing to the prospective franchisee, at least 14 days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least 14 days prior to the receipt of any consideration, whichever occurs first, a copy of the franchise disclosure document, together with a copy of all proposed agreements relating to the sale of the franchise.

11. Corporations Code section 31201 provides:

It is unlawful for any person to offer or sell a franchise in this state by means of any written or oral communication not enumerated in Section 31200 which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

12. Corporations Code section 31406 provides:

(a) If, upon inspection or investigation, based upon a complaint or otherwise, the commissioner has cause to believe that a person is violating any provision of this division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two

thousand five hundred dollars (\$2,500) per violation and shall contain reference to this section, including the provisions of subdivision (c). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 60 days from the receipt of the citation, the person cited fails to notify the commissioner that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the commissioner. The application shall include a certified copy of the final order of the commissioner and shall constitute a sufficient showing to warrant the issuance of the judgment and order.

13. Based upon the foregoing findings, the Commissioner is of the opinion that Handel's Enterprises, Inc. and Leonard J. Fisher failed to provide a copy of the FDD together with a copy of all proposed agreements relating to the sale of the franchise, at least 14 days prior to the execution of the franchise agreement, to at least one franchisee in this state, in violation of section 31119, subdivision (a). Pursuant to Corporations Code section 31406, Respondents are hereby cited and ordered to desist and refrain from violating Corporations Code section 31119, subdivision (a).

14. Further, the Commissioner is of the opinion that Handel's Enterprises, Inc. and Leonard J. Fisher engaged in the offer and sale in this state by means of written or oral communications which include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to at least one franchisee, in violation of Corporations Code section 31201. Pursuant to section 31406, Respondents are hereby ordered to desist and refrain from the further offer

1 or sale of franchises, including but not limited to the operation of ice cream shops under the Handel's  
2 name, by means of written or oral communications which include an untrue statement of a material  
3 fact or omit to state a material fact necessary in order to make the statements made, in light of the  
4 circumstances under which they were made, not misleading.

5 15. This order is necessary, in the public interest, for the protection of franchisees and  
6 consistent with the purposes, policies and provisions of the Franchise Investment Law.

#### 7 IV

##### 8 Administrative Penalties

9 16. In light of the foregoing findings, under Corporations Code section 31406, Handel's  
10 Enterprises, Inc. and Leonard J. Fisher are hereby ordered to pay the Commissioner an administrative  
11 penalty in the amount of \$5,000.00 for one violation of each of sections 31119, subdivision (a) and  
12 31201 of the Corporations Code.

13 17. The administrative penalties in the amounts stated above shall be made payable in the  
14 form of a cashier's check or Automated Clearing House deposit to the "Department of Business  
15 Oversight," and transmitted to the attention of Accounting – Enforcement Division, Department of  
16 Business Oversight, 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment  
17 shall be concurrently sent to Marlou de Luna, Senior Counsel, Department of Business Oversight,  
18 320 West 4th Street, Suite 750, Los Angeles, California 90013, no later than 60 days from the date of  
19 this order.

#### 20 V

##### 21 Ancillary Relief and Fees

22 18. Corporations Code section 31408 provides:

23 (a) If the commissioner determines it is in the public interest, the  
24 commissioner may include in any administrative action brought under  
25 this division, including a stop order, a claim for ancillary relief,  
26 including, but not limited to, a claim for rescission, restitution or  
27 disgorgement or damages on behalf of the persons injured by the act or  
28 practice constituting the subject matter of the action, and the  
administrative law judge shall have jurisdiction to award additional

relief. The person affected may be required to attend remedial education, as directed by the commissioner.

(b) In an administrative action brought under this part the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include any amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Business Oversight.

19. In light of the foregoing findings, under Corporations Code section 31408, subdivision (b), Handel's Enterprises, Inc. and Leonard J. Fisher shall pay attorney fees and investigative expenses to the Department of Business Oversight in the amount of \$13,200.00 or according to proof. The amount awarded for attorney's fees and investigative expenses shall be made payable in the form of a cashier's check or Automated Clearing House deposit to the "Department of Business Oversight," and transmitted to the attention of Accounting – Enforcement Division, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment shall be concurrently sent to Marlou de Luna, Senior Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013, no later than 60 days from the date of this order.

20. This order is necessary, in the public interest, for the protection of investors and franchisees and consistent with the purpose, policies and provisions of the Franchise Investment Law.

Dated: December 3, 2018

JAN LYNN OWEN  
Commissioner of Business Oversight

By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division